IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.461 of 1995

1. Ramalinga Chettiar (Died)
2. Bangaru Ammal (Died)
3. R.Selvarajan
4. Kausalya @ Maliga
5. R.Ravi
6. R.Sivaprakasam
7. R.Yuvaraj

Appellants 3 to 7 are brought on record as L.Rs.of the deceased 1st and 2nd appellant vide order of the court dated 20.04.2005 made in C.M.P.No.3196 to 3199 of 2005

... Appellants

Vs.

1. Sankaraiya Chettiar
2. Gunalan
3. Palani

... Respondents

PRAYER: Second Appeal filed under Sec.100 Code of Civil Procedure against the Judgment and decree dated 21.03.1994 made in A.S.No.143 of 1990 on the file of the Court of the First Additional District Judge at Pondicherry, reversing the judgement and decree dated 09.08.1990 made in O.S.No.65 of 1987 on the file of the court of Additional Sub Judge at Pondicherry.

For Petitioners : Mr.G.Masilamani, S.C.
for Mr.T.P.Manoharan
For Respondents : Mr.V.Raghavachari, S.C.
for Mr.P.Krishnamoorthy

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J U D G M E N T

The first and second defendants in the suit are the appellants in the second appeal. The appellants died and their legal representatives have been brought on record as appellants 3 to 7. The first respondent filed the suit in O.S.No.65 of 1987 for a decree of dissolution of partnership business directing the first defendant to render account and also allotment of 1/3rd share to the plaintiff in the assets and liabilities.

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The plaintiff, 1st and 4th defendant have commenced a paddy rice and maligai business in the name of Sri Shankaraiya Chettiyar as Hindu undivided family concern. It is admitted that the plaintiff, first defendant and the 4th defendant Palani are brothers. Since the 4th defendant was in the Government service, his son the third defendant Gunalan was representing him in the business. According to the plaintiff, the business was started in the year 1956 and came to an end on 14.08.1973, when there was a family partition. According to the plaintiffs, in spite of the family partition, accounts relating to the said family business were not taken and the first defendant were maintaining the accounts. The cheques issued in the name of the plaintiff by the customers were endorsed in favour of the first defendant.

2. According to the plaintiff, it is from the funds raised out of the family business, the first defendant has purchased the suit property numbering 9 items in the name of his wife the second defendant. It is also the case of the plaintiff that from 1956 - 1973 in the family business the turn over was running to several lakhs and the first defendant has himself maintained the amounts. In these circumstances, the suit for dissolution of partnership came to be filed.

3. The case of the defendants 1 and 2 in the written statement was that the business was started in the name of the plaintiff and its accounts were maintained by the 4th defendant throughout, even though he was working in Court. The first defendant also denied that there was any account much less audited accounts in respect of the business. It is the case of the first defendant that the plaintiff started living separately from 1969 onwards and there has been a registered partition among the brothers on 14.08.1973 and various properties were allotted to various brothers as per the registered partition deed marked Ex.B.9 and the partition deed also clearly states that all business which was carried on by the brothers and the properties purchased by them shall belong to them respectively.

4. It is also the case of the first defendant that he has started a separate rice mill business of his own from 1967 as S.R. Rice Mills. He has purchased the properties in the name of the second defendant and he has spent enormous amounts in construction of the rice mill in the item number 1 of the suit property which belongs to him. It is only after the prices of the properties have increased in the market, at the instance of the 4th defendant with ulterior motive, the present suit is filed.

5. It is also the case of the first defendant that the rice mill started in the name of Shankaraiya Chettiyar was never closed and the plaintiff is still continuing the same in his name at No.54 Thambu Nayaker Street, Pondicherry in the premises allotted to him in the partition. The Trial Court after considering all the facts and analyzing the evidence has dismissed the suit. However, the first Appellate Court has granted the decree of dissolution of the partnership and passed a preliminary

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decree, against which the present Second Appeal is filed. At the time of admission, the following substantial questions of law were framed:

> "1. Whether in view of the provisions contained under Section 92 and 94 of the Indian Evidence Act, the first respondent can be allowed to plead and adduce evidence to contradict and vary the clear and plain meaning of the written recitals contained under Ex.B.9 Registered partition deed dated 14.08.1973, after the same was acted upon by the parties, including himself, that too, after 14 years?
> 2. Whether in view of the specific and clear recitals contained under Ex.B.9 the first appellant is not entitled to own and enjoy the properties belonged to him on the date of Ex.B.9 but not partitioned under it and the properties purchased by him after it and also to carry on his rice mill business absolutely with all rights and consequently, whether the first respondent or their legal heirs are entitled to claim any right or share over the said properties and the business of the first appellant?
> 3. Whether the Court below was right in ignoring the entire oral evidence save making only a passing reference about P.W.2 and the documents produced by the Appellant save Ex.B.9 and not considering and discussing the contents of Ex.A.1 to 140 and its truthfulness, correctness, validity and relevancy while admitting them and consequently, whether such non incorrect consideration had not brought in serious infirmities in its judgment and vitiated it?
> 4. Whether the Court below was right in suo moto presuming after 20 years that the shares allotted under Ex.B.9 were inequal and holding that it is not safe to accept the conclusion of the trial court that Ex.B.9 is a final document prohibiting the first respondent's claim for rendition of business income. When the first respondent/ plaintiff had not even challenged Ex.B.9 on any ground, muchless, on inequity in the allotment of shares?
> 5. Whether the pleadings and the relief prayed for by the first respondent in the suit which are imaginary, vague and contrary to the written recitals contained under Ex.B.9 and B.1 can be accepted and a decree granted the non?"

6. Mr.G.Masilamani, learned Senior Counsel appearing for the appellant would submit that the suit itself which proceeds on the basis that there was a partial partition as per partition deed dated 14.08.1973 is bad in law, especially in the circumstance that it was the case of the plaintiff that the business conducted in the name of the plaintiff as Sri Shankaraiya Chettiyar was a Hindu undivided family concern especially after the partition has been effected on 14.08.1973. He would also submit that the suit is also bad on the basis that when the plaintiff has issued a notice on 11.12.1981 marked as Ex.B.14, he has listed many items of ancestral properties in the said notice, out of which many are not included in the suit schedule. He would also submit that the plaintiff

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has chosen to file many exhibits on his side which are all relating to the individual business of the first defendant conducted in the name of S.R.Rice Mills and in effect the plaintiff has produced the defendant's account taking advantage of the fact that the said accounts were in the place allotted to the plaintiff, namely, 59 Jawaharlal Nehru Street.

7. He would also submit that after Ex.B.9 partition which is admitted as per the terms, there was no claim between the members of the joint family and in such circumstances the said Ex.B.9 along with a release receipt issued by the plaintiff marked as Ex.B.1 dated 14.08.1973 would go to show that after the said partition, namely, 14.08.1973 there was no relationship between the parties and therefore, the question of dissolution of partnership does not arise.

8. On the other hand, Mr.V.Raghavachari learned counsel appearing for the first respondent would submit that if really Ex.B.9 partition deed is taken as final account, there was absolutely no necessity on the part of the plaintiff to execute a release under Ex.B.1 on the same date of Ex.B.9. According to him, the very contents of Ex.B.1 shows that the plaintiff has got right over the S.R.Rice Mills from the date when that was started. He would also state that Ex.B.9 is only partial in the sense that there are 5 brothers in the family, when a partition is effected which was relating to immovable properties and it was silent about the business and therefore, the parties have decided to continue the business to be dissolved at a later point of time.

9. According to the learned counsel both M/s. Sri Shankaraiya Chettiyar and S.R.Rice Mills are one and the same and that is why the appellate court has also directed the disolution of the Shankaraiya Chettiyar Rice Mill alone. He would also submit that a reference to the Ex.A series would show that they were all either signed by the first defendant or written by his hand. According to him, the partnership is deemed to have dissolved only on 14.08.1973.

10. I have heard the learned Senior Counsel for the appellant as also the learned counsel appearing for the first respondent.

11. The entire issue which is raised in this second appeal revolves around the partition deed executed between the brothers which includes the plaintiff, first defendant and the fourth defendant on 14.08.1973 and marked as Ex.B.9 which is admitted. While it is the case of the plaintiff that the partition deed entered between the parties are only relating to the immovable properties belonging to the family it is silent about the business and therefore, the business is deemed to continue as partnership business and the dissolution is deemed to have come into effect on the date of the partition, namely, 14.08.1973 and inasmuch as the partition deed does not contain anything about the business, it is the duty of the first defendant to render accounts, since the plaintiff's case is that the first defendant has been maintaining the accounts.

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12. On the other hand, the case of the first and second defendants is that by virtue of the Ex.B.9 there is absolute partition and there was no question of rendering of any account since the partition deed itself relates to the settlement of the entire disputes which includes the business. Therefore, it is the construction of Ex.B.9 that is relevant to consider the issue, apart from few other issues which I would presently discuss. Before adverting to the issues involved in this appeal it is relevant to point out that the suit is laid on the basis that the joint family has conducted the business in paddy, rice and malagai at Pondicherry from 1956 as Hindu undivided family concern and the business came to an end on 14.08.1973 due to the partition. This is the specific pleading in the plaint.

13. It is admitted by the plaintiff as P.W.1 in his evidence that the first defendant has been conducting a separate rice mill in his name from 1957 in the name of S.R.Rice Mill with a license in the place belong to a Muslim. It is also admitted that the place of business of S.R.Rice Mill was in the name of the first and second defendant and he also has stated that in the place taken out on rent by the first defendant for business when it was acquired, under the Land Acquisition Act, the P.W.1 namely, the plaintiff has not interfered, since he had no rights. It is also not in dispute that item 1 to 8 of the suit schedule mentioned properties was purchased under various documents out of which the first item of property, which was purchased under Ex.A.146 dated 12.12.1973 was after the partition deed Ex.B.9 dated 14.08.1973. The other items of properties were purchased under various documents marked as Ex.A.144 dated 12.06.1972, Ex.A.143 dated 14.10.1971, Ex.A.142 dated 24.05.1972, Ex.A.148 dated 15.01.1972, Ex.141 dated 17.04.1965 Ex.A.149 dated 24.01.1970 and Ex.A.147 dated 24.01.1970 respectively and in respect of item No.9 purchased under Ex.A.145 dated 10.11.1965 and the same has been allotted to the share of the first defendant under Ex.B.9. Therefore, in respect of item 2 to 8 of the suit schedule properties they were purchased after the first defendant has started separately his S.R.Rice Mill in 1967. It is in the light of the above said facts relevant to consider the contents of Ex.B.9. A reference to Ex.B.9 partition deed which was entered between the brothers including the plaintiff, first defendant 4th defendant and other two brothers show that it was the B Schedule property contained therein which were ancestral and the other properties were purchased individually by the individual brothers by carrying on their respective business.

14. After dividing the entire properties and stating in the body of the partition deed that there is no other property right between the brothers, it is stated in the end of the partition deed in clear terms as a general condition that other than those properties which are divided under the partition deed if there are any other properties they are to be enjoyed by their respective parties absolutely and from the date of the partition the parties are to carry on their own business, which they are

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carrying on in their own name with absolute right without interference from the others and categorically stating that it is a final partition between the brothers. In addition to that, the plaintiff has also executed on the same date, namely, 14.08.1973 a release in favour of the first defendant marked as Ex.B.1 stating that since the partition has been effected between the brothers and they can separately carry on their business, in the business carried on by the first defendant in 59 Nehru Street in the name of S.R.Rice Mill, the plaintiff has no other rights.

15. A combined reading of Ex.B.9 and B.1, as correctly found by the learned Trial judge certainly shows that not only after the said partition dated 14.08.1973 any property purchased as it is seen in respect of item No.1 of the suit schedule property which was purchased subsequent to the partition deed under Ex.A.146 dated 12.12.1973, but also any business carried on by individual brothers like the first defendant, who was admittedly carrying on business as S.R.Rice Mill from 1967 as admitted by the plaintiff as P.W.1 himself should continue to be carried on in the individual name and in such circumstance there is absolutely no cause of action for the plaintiff to institute the suit for partnership accounts and dissolution. While that is the position the reasoning given by the learned first appellate judge to grant a preliminary decree for dissolution of partnership on the basis of the written statement of the 4th defendant who has neither chosen to give evidence especially in the circumstance that it is the 1st defendant's case that the suit itself was foisted only at the instance of the 4th defendant, for coming to the conclusion that the business was conducted in partnership and it was not the subject matter of partition Ex.B.9 are unsustainable. The reason given by the learned First Appellate Judge that when the 4th defendant filed a written statement stating that the Ex.B.9 partition deed was only between the plaintiff and the first defendant in respect of the properties and the business has been left out and against the written statement of the 4th defendant the first defendant has not filed any additional pleading is again not based on prudent reasoning, especially when the 4th defendant has not even appeared before the court and there was no occasion for the 1st defendant to file any reply statement against the written statement of the 4th defendant.

16. The reliance placed on the various Ex.A.6 to A.125 for arriving at a conclusion by the learned first appellate judge when are relating to S.R.Rice Mill which is even admitted by P.W.1 as the private business of the first defendant conducted from 1967 for passing dissolution is uncalled for. In the guise of getting dissolution of the business run in the name of Shankaraiya Chettiyar which was started 1956 as per the pleading, it is apparent that the plaintiff only seeks to usurp the benefit from the private business of the first defendant run by him as admitted by the plaintiff himself by producing all the documents marked from Ex.A.6 to Ex.A.125 which are all mostly relating to the S.R.Rice Mill. It is not even the case of the plaintiff that M/s.Shankaraiya Chettiyar business started from 1966 and S.R.Rice Mill is also forming

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part of it and on the other hand it was admittedly started by the first defendant as a private business.

17. In the light of the above circumstance, I am of the considered view that there is an error committed by the learned First Appellate Judge in not only construing the contents of Ex.B.9 and B.1 in their proper sense but also placing reliance on Ex.A.6 to A.125 which are relating to S.R.Rice Mill, to come to the conclusion for the purpose of dissolution of Ms.Shankaraiya Chettiyar which appears to have nothing to do with S.R.Rice Mills on the basis of the pleadings and evidence. The further observation made by the learned First Appellate Judge as if the partnership is independent of the common family properties is not founded on any materials.

18. The further reason given by the learned First Appellate Judge in suspecting the contents of Ex.B.9 to state that there is no provision stating that the brothers were given equal properties is clearly out of context in the sense that it is not even the case of the plaintiff. In any event a reference to the valuation given shows it is not as if there has been disproportionate and inequitable division. In these circumstances, the submissions made by the learned counsel for the first respondent as if the reading of Ex.B.1 should be construed as if till the said date of Ex.B.1 the S.R.Rice Mill should be treated as a joint family business of the plaintiff has absolutely no basis.

19. In view of the above said facts and on the construction of Ex.B.9 read with Ex.B.1 there is absolutely no difficulty to come to the conclusion that the business carried on by the members of the joint family individually were treated as individual business and there is absolutely nothing to show that the business carried on in the name and style of M/s.Shankaraiya Chettiyar started in 1956 was closed. Likewise there is absolutely no evidence or pleadings to show that the business carried on by the first defendant in the name S.R.Rice Mills admittedly from 1967 has anything to do with Mr.Shankaraiya Chettiyar.

20. The direction given by the First Appellate Court to the Trial Court to find out as to whether any part of the rice business income was used for the construction of A Schedule properties, as correctly submitted by the learned Senior Counsel appearing for the appellant would only amount to directing the Trail Court to conduct another trial which is not permissible in law. *

21. In view of the above said facts and circumstances of the case, the judgement and decree of the learned First Appellate Judge dated 21.03.1994 passed in A.S.No.143 of 1990 are set aside and the judgement and decree of the Trial Court dated 9th August 1990 passed in O.S.No.65 of 1987 are confirmed and the Second Appeal stands allowed with costs.

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No costs. Consequently, the connected C.M.Ps. are closed.

Sd/
Asst.Registrar
Dated : 18.05.2007

Deleted as per order of Court
dated 09.06.2007 and made herein

Sd/-
Asst. Registrar
Dated : 19.06.2007

/true copy/

Sub Asst.Registrar

nbj

To

1. The First Additional District Judge,
Pondicherry.

2. The Additional Subordinate Judge,
Pondicherry.

3. The Record Keeper,
V.R.Section, High Court, Madras.

1 cc To Mr.T.P.Manoharan, Advocate, SR.33255.
1 cc To Mr.G.R.Swaminathan, Advocate, SR.18530.

To be substituted to the order already despatched on 06.06.07

S.A.No.461 of 1995

VC(CO)
RVL 30.05.2007

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